IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17968 of 2006
With
SPECIAL CIVIL APPLICATION No. 15713 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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METHODIST SCHOOL OF NURSING - Petitioner(s)
Versus
R.J.SHAH(RETD.JUSTICE) ADMISSION COMMITTEE(MEDICAL) - Respondent(s)

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Appearance :
MR DC DAVE for Petitioner(s) : 1,
MR BP TANNA-SR ADVOCATE WITH MR NS KARIEL for TANNA ASSOCIATES for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 04/10/2006

ORAL JUDGMENT

1. Though while issuing rule on 05-09-2006, this

petition was ordered to be heard with Special Civil Application No.15713/2005, having heard learned advocates appearing for the parties for sometime, I find it appropriate that Special Civil Application No.17968/2006 be segregated and taken up for final hearing.

2. In Special Civil Application No.15713/2005 number of issues such as the authority of R.J. Shah Committee to regulate admission process for the petitioner-institution are involved. It would therefore, be convenient to deal with this petition separately at an appropriate time. For this purpose, Special Civil Application No.17968/2006 is segregated from Special Civil Application No.15713/2005.

3. In Special Civil Application No.17968/2006, primarily what is under challenge is an attempt on part of the respondent-Committee in preventing the petitioner from conducting its own separate test for admitting the students in the Nursing College run by the petitioner-trust.

By an interim order dated 23-8-2006, this Court had permitted the petitioner to conduct its open test provisionally which was scheduled on 28th and 29th August, 2006. Thereafter, by detailed order dated 5-9-2006 while admitting the petition this Court had also permitted the petitioner to admit the students in its Nursing College from the merit list prepared on the basis of test conducted on 28th and 29th August, 2006. Such admissions were however, made provisional and subject to outcome of this petition. Following portion of the order needs to be noted :

"8. Having heard learned advocates, I find that the question regarding the authority of the respondent Committee to regulate the admission process of the petitioner is pending before this Court in Special Civil Application No.15713/05. I, therefore, have not considered those questions even for prima-facie opinion.

9. With respect to other contentions however, it can be seen that right of the petitioner to apply for a separate entrance test is not seriously in doubt. Main stand adopted by the Committee in affidavit in reply is that for such a purpose application was not made in time.

10. This stand however, is somewhat contradictory to the impugned communication dated 18th June, 2006, in which it is stated that no such application has been made. On 15th June, 2006 when the petitioner applied for a special

permission, respondent Committee did not respond to it despite reminders. When this Court, therefore, by an interim order permitted the petitioner to conduct the tests, also permitted the Committee to supervise such a test and also permitted the Committee to call for necessary material in this regard. Unfortunately, this opportunity was not availed by the Committee. It may be noted that there was strong undercurrent in the said order requesting the Committee to supervise the conduct of the tests. Only in such a manner this Court could have; considering shortage of time on hand; balanced the equities and kept all questions open for being decided at a later stage after hearing the Committee. The intention of the Court was not to stop the petitioner from going ahead with the tests as the same would have resulted into harrasement to large number of students. At the same time, the Court wanted at-least to ensure that such test is conducted under the supervision of the Committee keeping it free from allegations of bias and irregularities. All other questions and considerations for further orders could have been taken up at a future date. With this balancing act in mind, this Court had passed interim order on 23rd August, 2006. Unfortunately, the Committee found it appropriate to take a unilateral decision not to participate in the conduct of the tests. If the Committee had some doubt or difficulty in carrying out the order of this Court in true spirit, it was always open for the Committee to apply to the Court for clarification or modification or recalling of the order. There was enough time available with the Committee to do so since this order was served on the Committee on 24th August, 2006.

11. Considering all these aspects of the matter, following order is passed:

1. Rule returnable on 4th October, 2006. To be heard with Special Civil Application No.15713/05.

2. By way of further interim relief, the

> petitioner is permitted to grant admission provisionally to the students as per the tests held on 28th and 29th August, 2006, strictly according to merits.
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> 12. It may be noted that there is some justification in Committee pointing out that the petitioner had come at a later stage. This Court has despite this, passed the above interim order considering the fact that there was possibility of some ambiguity about the authority which is competent to take up such an issue. Under no circumstances, for the next academic year, the petitioner should delay making of an application, if desire of the petitioner is to seek permission for a separate test."

4. It can thus be seen that permission was granted to the petitioner initially to conduct the test and thereafter, to provisionally admit the students on account of peculiar facts arising. It was on account of certain peculiar factual circumstances which prompted this court to pass the said order.

5. It is jointly stated by learned advocates appearing for the parties that pursuant to order dated 5-9-2006 passed by this Court, the petitioner has already granted admissions in the Nursing College run by the petitioner and the

students are already pursuing their studies.

6. Learned senior advocate Shri Bhaskar P. Tanna appearing for the Committee with Shri Nikhil S. Kariel submitted that in that sense, the order dated 5-9-2006 has been fully operated and reason for filing the petition has served its purpose. He submitted that even if the admissions already granted by the petitioner for the current academic year are to be validated and to be made non provisional, this course adopted by this Court should not be cited as a precedent and directions of this Court should be confined to peculiar facts of the case. Learned advocates appearing for the parties therefore, requested this Court to put an end to the litigation without inviting elaborative reasons.

7. Considering the submissions made and considering the broad consensus, as also peculiar facts arising in this petition, this petition is disposed of by directing that admissions already granted by the petitioner shall not be any

longer treated as provisional. Observations made by this Court in order dated 5-9-2006 in paragraph-12 regarding requirement of making timely application for seeking permission to conduct the separate tests are reiterated.

8. With these observations and directions, Special Civil Application No.17968/2006 is disposed of. Rule made absolute to the above extent with no order as to costs.

9. In Special Civil Application No15713/2005, S.O. to 8th November, 2006.

(Akil Kureshi, J.)

(raghu)